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**BEFORE THE IDAHO DEPARTMENT OF LANDS**

In the Matter of Application for Replacement  
of an Existing Seawall on Hayden Lake,  
Encroachment NP220096,  
GREGORY SCHNEIDER,  
  
Applicant.

AGENCY Case No. PH-2026-NAV-22-004

OAH Case No. 26-320-11

**PRE-HEARING STATEMENT BY  
OBJECTOR DOUGLAS MCINNIS**

**I. INTRODUCTION**

Objector Douglas P. McInnis ("McInnis") asks the Idaho Department of Lands (IDL) to deny Application NP220096 (the "Application") by Applicant Gregory Schneider ("Schneider") in its current form. McInnis recognizes that Schneider has an interest in protecting his shoreline from erosion.

But the existing seawall, as built, extends waterward of the ordinary high water mark, and McInnis has observed and documented a sediment plume arising from its placement and a related accumulation of sediment at his neighboring dock, which was already shallow before the project. The Application's proposed corrective work must address that impact.

McInnis seeks a design and construction method that protects both properties and preserves his access to the lake.

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The applicable regulations provide that framework. They generally disallow seawalls waterward of the high water mark, require consideration of less harmful feasible alternatives, and expressly protect adjacent property, water quality, and navigation. IDAPA 20.03.04.015.07; .030.02; .030.10.

The only survey locating the existing wall relative to the ordinary high water mark is the September 2026 Storhaug survey commissioned independently by Lance Olson, a neighboring property owner on Hayden Lake. (OBJ-03) The Storhaug survey depicts the entire wall waterward of the mapped high water line. That evidence requires the Department to reconsider the premise that part of the existing wall can remain in place.

McInnis requests either denial of the present proposal or, in the alternative, a revised proposal supported by reliable location evidence and enforceable measures to prevent further sediment accumulation at his dock. Separately, McInnis asks the Department to make findings establishing the extent of sediment displacement and accumulation attributable to the seawall at his dock, to support the mitigation and restoration relief requested below.

## **II. ANTICIPATED EVIDENCE**

### **1. Sediment is reducing the usable depth at McInnis's dock**

McInnis will testify about the condition and use of his dock before the seawall project (OBJ-09; OBJ-10), the sediment plume he has observed and documented arising from the placement of the seawall (OBJ-01; OBJ-11; OBJ-12; OBJ-13; OBJ-15), and the subsequent sediment accumulation near his dock. McInnis's dock was already shallow. (OBJ-08) He will also testify that additional sediment which appeared after construction of the seawall has further reduced the available water depth (OBJ-14; OBJ-

16) and interfered with his boating access on Hayden Lake. His testimony and authenticated photographs and video will describe the changes he has observed and their practical effect on his use of the lake.

McInnis's position is that the seawall has caused or materially contributed to that accumulation, based on his personal observations of the sequence of events and the change in conditions. He draws no technical conclusion about sediment transport or the volume of material requiring restoration.

McInnis asks the Hearing Officer to evaluate causation from the testimony, photographs, survey, and any properly supported technical evidence admitted at the hearing.

**2. Storhaug depicts the entire existing wall waterward of the mapped line**

Storhaug's September 14, 2026 Topographic Exhibit, Project 26-309, depicts the existing retaining wall and the ordinary high water line at elevation 2242.9 feet. (OBJ-03.) The entire wall lies on the waterward side of that line. The exhibit identifies its elevation datum as NAVD88. Its second surveyor note identifies Kootenai County Code 8.7.11 as the basis for illustrating the ordinary high water elevation. (OBJ-03 (Storhaug Topographic Exhibit, sheet 1 of 1, surveyor note 2, elevation datum, and wall detail).)

The exhibit is a topographic survey of existing features. McInnis offers it to show the physical relationship between the existing wall and the mapped ordinary high water line. He asks IDL to identify the elevation and datum it accepts for this application and explain any departure from the survey's placement of the wall.

### **3. The proposal to retain part of the wall requires reconciliation with the Storhaug survey**

The JM Engineering drawing attached to the Application appears to show the seawall partially below the ordinary high water mark. But that drawing is dated in 2020, before the wall was built, and appears to be a plan rather than an as-built survey. (OBJ-02.)

The August 14, 2026 application review email suggests IDL evaluated the application consistent with the JM Engineering drawing's depiction. IDL Resource Supervisor Mike Ahmer explained that the application would correct a seawall installed below the ordinary high water mark, with part of the wall remaining because IDL considered that portion correctly placed, and the rest removed and reinstalled. (Administrative Record 002-REC, Mike Ahmer email dated August 14, 2026, p. 1.) The email does not identify what location evidence IDL relied upon for that assessment.

But the Storhaug survey shows a material conflict between the materials submitted in support of the Application and the as-built location of the seawall. McInnis asks that the Hearing Officer resolve the difference between the survey and IDL's earlier assessment before recommending approval of a plan that retains any segment of the wall which encroaches waterward of the ordinary high water mark.

### **III. MCINNIS'S DOCK ACCESS IS ENTITLED TO ADMINISTRATIVE PROTECTION**

IDL's own rules require protection of dock access. They govern where a seawall may sit, how the Department must weigh its effects on neighboring property, what the supporting plans must show, and how corrective work must be carried out. McInnis addresses each requirement below.

## **1. The seawall placement standard applies to the entire structure**

The current rules classify a seawall as a nonnavigational encroachment used to prevent erosion. IDAPA 20.03.04.010.30. The specific seawall standard favors placement at or above the ordinary or artificial high water mark, where possible, and states that “placement waterward of the O/AHWM will generally not be allowed.” IDAPA 20.03.04.015.07. The quoted language establishes a strong general restriction while allowing consideration of site conditions. It does not make every waterward wall categorically impermissible.

Applied here, the rule requires reliable identification of the governing high water line and comparison of that line with every segment proposed to remain. The survey supplies affirmative evidence that the entire existing wall is waterward of the mapped ordinary high water line. If IDL accepts that line, the analysis must address the entire wall. Any proposed exception requires a factual explanation of why compliant placement is not feasible and why the proposed location satisfies the other governing standards.

McInnis requests an express finding identifying the applicable high water mark, the accepted elevation datum, and the position of each retained or relocated segment. If a different ordinary or artificial high water line governs, the decision must identify that line and the evidence supporting its use. Approval based on an unresolved location assumption would leave the central regulatory question unanswered.

## **2. The Department must weigh the harm to McInnis and feasible alternatives**

The Lake Protection Act requires consideration of property, navigation, recreation, water quality, and other lake values when evaluating an encroachment’s necessity or benefit. Idaho Code § 58-1301; IDAPA 20.03.04.012.01. Sediment that

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clouds the water and reduces the usable depth at an existing dock directly concerns property, navigation, water quality, and recreation. The Department must evaluate that loss when considering the proposed shoreline protection.

The more specific standard for an encroachment that does not aid navigation requires major environmental, economic, or social benefits exceeding the harm to public trust values and adjacent real property. Approval also requires consistency with the public trust doctrine and “no other feasible alternative with less impact on public trust values.” IDAPA 20.03.04.030.02. Protecting a shoreline from erosion can provide a legitimate benefit. The question is whether the particular design and location satisfy these requirements in light of their effects on neighboring dock access.

McInnis’s dock already had limited depth before this project. Because that margin was already narrow, even a modest increase in sediment can eliminate the clearance boats need to reach or leave the dock, so any additional sediment from the seawall has an outsized effect on his boating access. His objection concerns the project’s incremental effect on that access, and the Department must assess whether retaining a waterward wall or performing the proposed corrective work will continue or worsen that effect, and whether moving the wall landward or using another feasible stabilization design would reduce it.

The decision factors in IDAPA 20.03.04.030.10 also address adverse effects on adjacent property and interference with navigation. The rule gives those factors highest priority for the specified applications that do not extend below the ordinary high water mark. Because McInnis contends that the existing wall is entirely waterward of that mark, he does not rely on the priority language as though it applies without qualification

to the present footprint. The protections in .012.01 and the more demanding standard in .030.02 independently require full consideration of his dock and access. A revised proposal that remains at or above the ordinary high water mark must also receive the analysis prescribed by .030.10.

**3. Accurate plans must demonstrate how the proposal will meet the standards**

The application rules require plans with enough detail to demonstrate compliance, including a lakebed profile showing the relevant water marks and scaled information accurately locating the encroachments. IDAPA 20.03.04.020.07.a.i, ii, iv, v. Those requirements give the Department a means to resolve the location issue before it authorizes work.

Here, the plans and supporting testimony must reconcile the proposed retained and relocated wall segments with the Storhaug survey. The Department needs a common elevation datum and a clear depiction of the final alignment, including any footings, associated fill, and stabilization materials. The plans must also explain how the work will protect the nearby dock from additional sediment. A drawing of a proposed alignment alone cannot establish that a disputed existing segment is landward of the applicable line.

Under IDAPA 62.01.01.477, the burden of proof, by a preponderance of the evidence unless another authority provides otherwise, rests on the party requesting or challenging the agency action, or otherwise advocating a position. Schneider accordingly bears the burden on his Application, and McInnis bears the burden on his objection. McInnis will support his objection with the Storhaug survey and the evidence of the effects he has observed. The Hearing Officer can evaluate that evidence without

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treating the survey as a sediment transport study or requiring McInnis to prove the amount of a civil damages claim in this permit proceeding.

**4. Demolition and reinstallation must protect the lakebed and control sediment during corrective work**

The regulations require an application to describe demolition and the measures that will protect water quality and other public trust values. IDAPA 20.03.04.020.01. They also distinguish repairs from replacement or enlargement and prohibit repair or replacement that adversely affects the lakebed. IDAPA 20.03.04.020.04. Calling the project a replacement therefore does not dispense with the location and impact standards.

Removal and reinstallation can disturb the same shallow area central to McInnis's objection. IDAPA 20.03.04.060.02.a, b requires removal of unused structures and construction waste and demolition methods that avoid unnecessary damage to the lakebed or shoreline and comply with applicable water quality standards. Any authorized corrective work needs a defined sequence, sediment containment measures, and verification of the completed alignment. Those protections serve both the applicant's shoreline and McInnis's dock.

**IV. REQUESTED DECISION**

McInnis requests a recommendation denying Application NP220096 in its current form. The record must resolve the location of the entire existing wall and demonstrate that the proposed correction satisfies the seawall placement standard, the alternatives analysis, and the protections for adjacent property and navigation.

If the Department considers approval of a revised proposal, McInnis requests that it require the following before authorizing corrective work:

1. Reliable location evidence identifying the applicable high water line and datum, the entire existing wall, and the final alignment of every retained or relocated segment, including associated footings and fill.
2. A design that places the seawall at or above the applicable high water mark where feasible, with specific evidentiary justification under IDAPA 20.03.04.015.07 and .030.02 for any waterward portion.
3. Evaluation of feasible alternatives and supported findings addressing the project's effect on sediment accumulation, water quality, the usable depth at McInnis's dock, and his boating access.
4. An approved demolition and construction plan that controls sediment, protects the lakebed and neighboring dock, removes unused material, and requires verification that the completed work conforms to the approved alignment and permit conditions.

To the extent the evidence establishes project-related damage requiring mitigation or restoration, McInnis also requests that the Department address that damage through its authority under IDAPA 20.03.04.080.06, with any additional notice or proceeding required for the relief selected. Any sediment removal requires the applicable authorization and a plan that protects water quality. See IDAPA 20.03.04.020.06. McInnis asks for findings on these issues sufficient to guide the Department's corrective action.

A compliant shoreline protection project can serve Schneider's legitimate interests while preserving McInnis's use of his dock. The Department should require that result before approving this application.

DATED this 26th day of October 2026.

FENNEMORE CRAIG, P.C.

A handwritten signature in dark ink, appearing to read 'L. Morgan', is written over a horizontal line.

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LINDSEY A. MORGAN, ISB #12149  
Attorney for Objector Douglas McInnis

## CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2026, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

|                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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/s/ Jody Evans  
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